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09/558,313	04/25/2000	Amit D. Agarwal	23984-13939 US	9641
758	7590	07/09/2009	EXAMINER	
FENWICK & WEST LLP SILICON VALLEY CENTER 801 CALIFORNIA STREET MOUNTAIN VIEW, CA 94041			BUCHANAN, CHRISTOPHER R	
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/558,313

Filing Date: April 25, 2000

Appellant(s): AGARWAL, AMIT D.

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For Appellant

**EXAMINER'S ANSWER**

This is in response to the "Order Returning Undocketed Appeal To Examiner" mailed 5/4/09 and the appeal brief filed August 1, 2006 appealing the Office action mailed December 29, 2005.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect. The amendment after final rejection filed on December 10, 2007 has been entered.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

### **(7) Claims Appendix**

A substantially correct copy of appealed claims 1-37 and 39-47 appears on page 35-43 of the Appendix to the appellant's brief. The minor errors are as follows: claim 38 has been cancelled via amendment after final.

### **(8) Evidence Relied Upon**

6,026,376	KENNEY	2-2000
5,909,023	ONO et al.	6-1999
5,655,174	HIRST	8-1997

### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-26, 36-37, and 42-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenney (US 6,026,376) in view of Ono (US 5,909,023).

Kenney discloses a method in a data processing system for automatically initiating the replenishment of a consumable product that includes the steps of receiving an order for a customer and filling that order on a first date (col. 4 line 25+) and estimating a target date for suggesting replenishment (col. 11 lines 12-34, order frequency and average time amount to determining a “target date”). The user is provided with an indication that the product should be replenished (see Figs 5 and 7, col. 12 line 50+, it is displayed which products need to be reordered). The consumer then requests replenishment of the product by performing an interaction (clicking on the displayed product, col. 12 line 56) and the product is ordered (see Fig. 10A). The target date is estimated based on the first date and the average life span of the item, which in turn is determined by the length of intervals between purchases (col. 11 lines 26-34). It is implicit that Kenney employs a computer memory and a computer-readable medium containing instructions for carrying out the method.

Kenney does not disclose transmitting information of a good whose purchase interval has lapsed or providing an indication to the consumer on or before the target date.

Ono discloses a purchase history information of each good purchased by a user that is stored at a service offering system (abstract, Fig. 5) and in response to an input of identification information from a service use system, the service offering system searches the purchase history information of the user corresponding to a user identifier

and calculates a purchase interval of each good purchase by a user (102, Fig. 1), the service offering system judges, for each good whose purchase interval was calculated, whether the time corresponding to the purchase interval has lapsed after the latest purchase day (103, Fig. 1) and the service offering system transmits information of the good whose time corresponding to the purchase interval has lapsed to the service via a communication network and displaying the information at the service use system (abstract, 104, 223, Fig. 1).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Kenney to transmit information of the good whose purchase interval has lapsed or to provide an indication to the consumer on or before the target date, as taught by Ono, so the consumer will not run out of the item because it would estimate a demand occurrence time for each good and supply a user with the merchandise information at the estimated time of the next purchase.

Furthermore, the items being sold in Kenney are physical articles. However, the type of item being sold does not alter how the system functions, so this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994). Therefore, it would have been obvious to one of ordinary skill in the ad at the time the invention was made to employ the system of Kenney to sell any type of item because the type of item does not patentably distinguish the claimed invention.

Neither Kenney nor Ono teaches the step of determining a target date based on availability of an item. However, it is common in the art to only suggest the purchase of an item if that item is in stock. It therefore would have been obvious to one of ordinary skill in the art at the time the invention was made to use the availability of the item to determine a target date so that the indication is sent only if the item is available.

Neither Kenney nor Ono teaches the step of determining a target date based on the size of the item. However, it is commonly known in the art that the size of an item will impact the length of time it takes to consume. It would have been obvious to one of ordinary skill in the art at the time the invention was made to determine a target date based on the size of the item, so that a more accurate date is determined.

Neither Kenney nor Ono teaches the step of determining a target date base on an expiration date. However, it is commonly known in the art that items need to be replaced after they expire. It would have been obvious to one of ordinary skill in the ad at the time the invention was made to employ to determine a target date based on an expiration date so that a customer will replace expired items.

Claims 27-35 and 45-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenney (US 6,026,376) in view of Ono (US 5,909,023) and further in view of Hirst (US 5,655,174).

Kenney and Ono teach all of the limitations of the claims except for the step of scheduling a time for transmission of a unilateral transmission indicating that the item should be purchased.

Hirst discloses a processor (38) providing a signal to controls and displays (42) to indicate a warning message reminder (128, 130, Fig. 6) to schedule a reordering process for a particular product and sometimes the reordering is done automatically as claimed.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the message indication and the automating reordering, as taught by Hirst, in the combined system of Kenney in view of Ono because it would ensure that customers are aware of an upcoming event and that products are ordered in a timely fashion.

#### **(10) Response to Argument**

Appellant argues that the prior art references used in the rejection above do not disclose all the claimed features of the instant invention and that there is no motivation to combine the teachings of the different references. In particular, appellant argues that Kenney fails to disclose a control that may be used to request replenishment of a product by performing a single action or a defined region in which a user may perform a single mouse click to request replenishment of the product. Appellant also argues that Kenney fails to disclose placing an order on the consumer's behalf for replenishment of the item within a predetermined tolerance of the target date. Appellant further argues that Ono fails to disclose providing information regarding a good whose purchase interval has lapsed or determining a target date for suggesting replenishment of an item. Appellant further argues that the references fail to disclose scheduling for a time

preceding the expiration time a unilateral transmission to the purchasing entity that the item should be purchased.

The examiner disagrees and stands by the rejection. Kenney discloses that a shopper can select a product to be ordered by clicking on the product while it is displayed on the computer screen (col. 12 line 55+). The examiner interprets this as performing a single action and the location on the screen for displaying products to be a defined region for making requests (see Figs. 5-9). Kenney also discloses that a product reorder list is made by considering order frequency and average time between product purchases (col. 11 line 21+) and that the reorder list can be automatically generated (col. 11 line 30). The examiner interprets this as determining a target date and placing orders on the consumer's behalf within the target date. Ono discloses determining whether a product purchase interval has lapsed after the latest purchase day (103, Fig. 1) and transmitting information of a good whose purchase interval has lapsed to a service offering system and displaying the information at the service use system (abstract, 104, 223, Fig. 1). The examiner interprets this as providing information regarding a good whose purchase interval has lapsed and determining a target date for suggesting replenishment of an item. Hirst discloses providing a signal to controls and displays to indicate a warning message reminder (128, 130, Fig. 6) to schedule a reordering process for a particular product. The examiner interprets this as scheduling for a time preceding the expiration time a unilateral transmission to the purchasing entity that the item should be purchased. Lastly, motivation for combining the references has been provided in the rejection above.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Christopher R Buchanan/

Examiner, Art Unit 3627

*Conferees:*

/F. Ryan Zeender/

Supervisory Patent Examiner, Art Unit 3627

Vincent Millin /vm/

Appeals Practice Specialist